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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and  
Respondent,

v.

LORENZO COURSE,

Defendant and  
Appellant.

B289730

(Los Angeles County  
Super. Ct. No. TA137265)

APPEAL from a judgment of the Superior Court of Los Angeles County, John Cheroske, Judge. Affirmed and remanded.

James Edward Jones, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior

Assistant Attorney General, Michael C. Keller, Deputy Attorney General, for Plaintiff and Respondent.

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Defendant and appellant Lorenzo Course pleaded no contest to one count of corporeal injury to a spouse with a prior conviction (Pen. Code, § 273.5, subd. (f)(1)<sup>1</sup> [count 1]), and one count of assault with force likely to cause great bodily injury (§ 245, subd. (a)(4) [count 2]). The trial court struck Course's two prior strike convictions (§§ 667, subds. (b)–(i), 1170.12, subds. (a)–(d)) pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, and set aside the allegations as to both counts that Course inflicted great bodily injury in the commission of the crimes (§ 12022.7, subds. (a) & (e)) pursuant to section 995.

The court initially placed Course on probation, but he violated the terms of his probation and was ultimately sentenced to six years in prison, consisting of the upper term of five years in count 1 and a consecutive one-year sentence in count 2 (one-third the midterm).

Course contends that the trial court erred in imposing consecutive sentences in counts 1 and 2 because the offenses occurred during a single course of conduct, and multiple punishment is prohibited under section 654. He also contends that the trial court miscalculated his custody credits.

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

We remand to the trial court for the limited purpose of determining the number of custody credits Course should have been awarded. In all other respects the judgment is affirmed.

## **FACTS**

Based upon the stipulation of Course's counsel, the trial court accepted the preliminary hearing transcript and the police reports as the factual basis for Course's no contest plea.

At the hearing, the victim testified that she initiated a physical fight with Course, who was her husband, by hitting him repeatedly with her fists and that she also hit him with a bat. She sustained a bloody nose when he pushed her away in an attempt to defend himself. She called her daughters about an hour after the argument and the police arrived about an hour after that.

The prosecutor impeached the victim with the testimony of Deputy Sheriff Edward Gonsalves, who responded to the scene. The deputy testified that when he arrived the victim was distraught, crying, and had visible injuries, including a bloody nose, blood on her shirt, and an injured wrist. She complained of injuries to her face. She told the deputy that her husband entered the apartment and started yelling and punching her. At some point Course knocked the victim to the ground and continued hitting her. After being knocked down, she was able to use her cell phone

to call one of her two daughters and tell her what happened. The two daughters were together on their way to a fast food restaurant when they received the call. Both of her daughters told the officer that when they returned to the house, Course was hitting their mother. Shortly after the daughters arrived, Course fled the scene. Paramedics responded to the scene and treated the victim. The victim never told the deputy that she hit Course.

## **DISCUSSION**

### ***Consecutive Sentences***

Course contends that the trial court erred by imposing consecutive sentences in counts 1 and 2, because the offenses arose from the same course of conduct, and a defendant may not receive multiple punishments for a single course of conduct under section 654. We conclude that substantial evidence supports the trial court's finding that Course harbored a different intent and objective when he hit the victim before she phoned her daughters for help than he did when he hit her again after the call, such that the trial court did not err in imposing consecutive sentences.

### **Legal Principles**

Section 654, subdivision (a), provides: "An act or omission that is punishable in different ways by different

provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision.” “In *Neal v. State of California* (1960) 55 Cal.2d 11, this court construed the statute broadly: “Section 654 has been applied not only where there was but one ‘act’ in the ordinary sense . . . but also where a course of conduct violated more than one statute and the problem was whether it comprised a divisible transaction which could be punished under more than one statute within the meaning of section 654.” [Citation.] [¶] Whether a course of criminal conduct is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the intent and objective of the actor. If all of the offenses were incident to one objective, the defendant may be punished for any one of such offenses but not for more than one.’ (*Id.* at p. 19.)” (*People v. Rodriguez* (2009) 47 Cal.4th 501, 507, italics omitted.) “If, however, the defendant had multiple or simultaneous objectives, independent of and not merely incidental to each other, the defendant may be punished for each violation committed in pursuit of each objective even though the violations shared common acts or were parts of an otherwise indivisible course of conduct. [Citation.]’ [Citation.]” (*People v. Hairston* (2009) 174 Cal.App.4th 231, 240.)

“The question whether section 654 is factually applicable to a given series of offenses is for the trial court, and the law gives the trial court broad latitude in making

this determination. Its findings on this question must be upheld on appeal if there is any substantial evidence to support them.” (*People v. Hutchins* (2001) 90 Cal.App.4th 1308, 1312 (*Hutchins*).) “When a trial court sentences a defendant to separate terms without making an express finding the defendant entertained separate objectives, the trial court is deemed to have made an implied finding each offense had a separate objective.” (*People v. Islas* (2012) 210 Cal.App.4th 116, 129 (*Islas*).) ““We must ‘view the evidence in a light most favorable to the respondent and presume in support of the [sentencing] order the existence of every fact the trier could reasonably deduce from the evidence. [Citation.]’ [Citation.]” [Citation.]’ (*Hutchins, supra*, [] at pp. 1312–1313.)” (*People v. Tarris* (2009) 180 Cal.App.4th 612, 627.)

### **Analysis**

Reviewing the evidence in the light most favorable to the judgment, we conclude that substantial evidence supports the trial court’s implied finding that Course committed the offenses in counts 1 and 2 with different intents and objectives.<sup>2</sup> Deputy Gonsalves testified that the victim told him that Course started to beat her immediately upon entering the victim’s home, and that after being

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<sup>2</sup> The trial court did not discuss its reasoning at the probation and sentencing hearing, so we treat the finding as implied. (See *Islas, supra*, 210 Cal.App.4th at p. 129.)

knocked down she was able to phone her daughters for help. The victim's daughters told the deputy that when they returned home after receiving the call, Course was hitting their mother. The evidence supports an inference that there were two separate incidents of Course beating the victim, separated by her call to the daughters. Regardless of the objective Course held when he first began beating the victim, the evidence supports the finding that Course had a different objective when he beat the victim again after she made a phone call to her daughters—to punish her for telling her daughters that he attacked her and for seeking their help. This is a separate objective that the trial court could reasonably deduce from the evidence presented. (See *People v. Nubla* (1999) 74 Cal.App.4th 719, 731 [pushing wife onto bed and placing gun to her head did not facilitate and was not incidental to pushing gun into wife's mouth and chipping her tooth in same incident; substantial evidence supported imposition of sentences for both assault with a deadly weapon and corporeal injury to a spouse].) The trial court did not err by imposing consecutive sentences.

## ***Custody Credits***

Course contends, and the Attorney General agrees, that the trial court miscalculated the number of custody credits to which he is entitled. In their briefs, the parties urge us to rely on trial counsel's calculation of credits, which varies from both the trial court's oral pronouncement and the total custody credits reflected in the abstract of judgment, which are in turn inconsistent with each other.<sup>3</sup> We cannot calculate the number of custody credits to which Course is entitled based on trial counsel's representation, and the record on appeal does not contain other information sufficient to allow us to make the determination. Because calculation of Course's custody credits involves a factual determination more properly resolved in the trial court, we remand the cause for redetermination of custody credits and correction of the abstract of judgment, if necessary. (*People v. Kunath* (2012) 203 Cal.App.4th 906, 911.)

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<sup>3</sup> To confuse matters even further, the number of credits that Course claims to be entitled to in the opening brief differs from the number the Attorney General contends he is due in the People's response. In the reply brief, Course appears to now concur with the Attorney General's calculation "if trial counsel was correct regarding actual credits."



## **DISPOSITION**

We remand to the trial court for the limited purpose of determining Course's custody credits. If appropriate, the court is directed to amend the abstract of judgment and to provide a certified copy to the Department of Corrections and Rehabilitation. In all other respects the judgment is affirmed.

MOOR, J.

We concur:

BAKER, Acting P.J.

KIM, J.